

**ANDOVER BOARD OF HEALTH**

**Minutes**

**July 12, 2010, 6 P.M.**

**1st Floor Conference Room**

**36 Bartlet Street**

The Board of Health Meeting was called to order at 6:02 p.m. Present were Ms. Candace B. Martin, Chairman, Dr. Donald H. Miller, Vice-Chairman, Ms. Katherine Kellman, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

**I. Approval of Minutes**

- Regular Meeting of June 7, 2010
  - **On Page 6, under • Update on Dufton Road, Last Sentence (Verify date for ORDER for the homeowner to clean up by July 1, 2010.)** - Change last sentence from "...there was an ORDER to the homeowner to clean up by July 1, 2010." to "...there was either a Building Division or Court ORDER for the homeowner to clean up by July 1, 2009."

*Motion by Ms. Martin seconded by Dr. Miller to approve the Minutes of the Meeting of June 7, 2010, with the noted correction. Unanimous approval.*

**II. Appointments & Hearings**

- **6:00 p.m. – Luky 7/Destinations, Show Cause Hearing for Sale of Tobacco to a Minor, 2<sup>nd</sup> Offense** – Present were John Zacharia, Attorney representing Mr. Bharat Shah, owner of the establishment, customer Lorraine Kanellis and Mr. Ronald Beauregard, Director of the Healthy Communities Tobacco Control Program. Atty. Zacharia stated that he had submitted an affidavit to Mr. Carbone from Mr. Shah's perspective hoping to clear up the issue. Mr. Shah is the owner and usually operates the business by himself, but had a couple of family emergencies that took him away from the business, so he hired an acquaintance to fill in while he was away. The acquaintance was hired on short notice and didn't speak English very well, but Mr. Shah quickly gave him training, and admitted that he may not have trained him well on the sale of tobacco. The other time his business sold tobacco to a minor was in January when he had a different employee working for him. After that event, Mr. Shah decided not to hire anyone else, but to be the only one working in the store, which he was until he had this emergency. Ms. Martin stated that being the only one in the store is very difficult, and noted there will be other times Mr. Shah may need to have emergency coverage. She asked if Mr. Shah had any written instructions with a reminder saying there is to be no sale of tobacco to a minor. Mr. Shah replied that he has instructions on the top of the register stating that an ID should be seen when there is a sale of tobacco for anyone under eighteen years of age. Mr. Shah is open five days a week from 9 a.m. to 4 p.m. Dr. Miller stated that he understood the

circumstances, but that this was a second offense for Mr. Shah, and that there is already a precedent for suspensions for other establishments in the past. Right now there seems to be no system in place to prevent this from happening again. There are signs up, but there needs to be training in place for the future.

Mr. Beauregard stated that the facts have not been disputed and Mr. Shah has paid the \$200.00 ticket, but has to be more attentive. Mr. Beauregard visited the establishment in the past when Mr. Shah did not know he was there, and he did see a couple of people who looked young being asked for identification. Some businesses decide not to sell tobacco if the Manager or owner is not there. Mr. Beauregard stated that he could add this as an alternative to the seven day suspension. Sometimes along with the suspension, the establishment would also have to ID anyone no matter what the age for a period of six months to a year, and that would take all discretion away from the clerk. Ms. Martin asked how long Mr. Shah has had the business, and he replied that he has owned it for a year. Dr. Miller stated that it seems that Mr. Shah doesn't sell a lot of cigarettes and that a suspension wouldn't be so bad for him and suggested that no employees sell any cigarettes at all. Mr. Shah replied that he only sells four or five packs of cigarettes a day and he would be willing to be the only one selling cigarettes in the store.

Ms. Kanellis addressed the Board to let them know that she was a previous customer at his North Andover store and found him to be a good shopkeeper and she has witnessed him asking for ID's. Ms. Martin stated that she likes to follow precedence and knows people come across a bad spell, but a suspension for at least one day shows that it really is not acceptable. She also stated that to prohibit other employees from selling tobacco could restrict his business. Dr. Miller stated that they could word it so that the Board could revisit the restriction if the business gets bigger. Ms. Kellman asked Dr. Miller what period of time he was contemplating. Dr. Miller replied that he would suggest indefinitely or until such time as Mr. Shah decides to increase his business.

*Motion by Ms. Martin, seconded by Ms. Kellman, to issue a one day suspension and to prohibit for one year, the sale of tobacco by anyone besides the owner. Ms. Kellman, seconded. Dr Miller asked for discussion.*

Discussion: Dr. Miller did not want to make a year limit on the sale of tobacco by anyone besides the owner.

*Motion by Dr. Miller seconded by Ms. Kellman to amend the previous motion to take out the one year limit. Vote taken, Ms. Martin, Nay, Dr. Miller Aye, Ms. Kellman, Aye. The Motion passed two to one.*

*The Board then voted on the amended motion, and it was unanimously approved.*

- **6:30 p.m. – David Kiu for Peking Garden Restaurant, Show Cause Hearing for Revocation or Suspension of Operating Permit (Continued)** – Present were Mr. David Kiu, Maureen Lee, Mr. Kiu's contractor, and Attorney Stolzberg who is representing Mr. Kiu. At the last Board of Health Meeting on June 7, 2010, Mr. Kiu was told that if he had any critical violations after that date, he would have to appear at the next Board of Health Meeting.

Mr. Kiu explained that he did receive a critical violation on his last inspection by Ms. Lee on 6/22/10 because the in-line refrigeration unit was not keeping the food temperatures cold enough. Mr. Kiu further explained that he knew he needed a new in-line refrigeration unit and that at the time of the inspection, he was actually in Boston purchasing a new unit that meets the Mass. Food Code requirements because he knew the food code did not allow the old unit.<sup>1</sup>

When Mr. Kiu returned the next day, he found that the inspection had been done with the critical violation noted. Ms. Lee suggested that Mr. Kiu contact Mr. Carbone right away to let him know a new unit was purchased, but Mr. Kiu failed to contact Mr. Carbone because he wanted to set up the unit and monitor it to make sure the unit functioned properly. Mr. Carbone contacted Mr. Kiu about the critical violation and was unaware of the new unit until he went to the restaurant. Mr. Carbone saw the new unit, but found that the temperatures were still too high. Mr. Kiu had added some meat that made the temperature go up, but within a half-hour the temperatures went down. When Mr. Carbone left the establishment the temperatures were fine.

Attorney Stolzberg stated that he felt that Mr. Kiu was pro-active by buying the new unit without being told to do so and thus was aware of the seriousness of the situation. Ms. Martin stated that if Mr. Kiu had removed the meat from the non-working refrigerator unit, she would have been fine with that action. Ms. Martin noted that there were still some non-critical violations that seem to be happening repeatedly, but also noted there was some improvement as well. The Board was pleased that Mr. Kiu took the initiative to replace the unit, but felt that he should have let Mr. Carbone know that he was aware of the problem and that he was replacing the unit.

Ms. Martin stated that the Board has seen Mr. Kiu throughout the past year with equipment and personnel issues, and asked Mr. Kiu what he had planned for training and what had improved. Mr. Kiu replied that he has stressed the importance of the staff's behavior. Ms. Lee noted that there has been improvement among the personnel, however the non-criticals continue because there is no proper supervision, and people are not held accountable. Mr. Kiu stated that he goes over the inspection reports with the staff and has meetings to focus on the critical violations. He also discussed the new unit, having them observe how it works and how to maintain the required temperatures.

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<sup>1</sup> NOTE: Included in the Agenda Package for this date, July 12, 2010, is a receipt with an invoice date of 6/23/10 from Tigar Refrigeration Company, Manufacturers and Distributors of Commercial Refrigeration Equipment, for a Sandwich Unit, Model S61, Mfg. by Entrée and provided to the Board by Mr. Kiu at the meeting.

Ms. Martin replied that Mr. Kiu may have to take more drastic measures with his staff in order to keep the critical violations from happening. She also stressed that staff needs to realize that they not only have to follow the law, but have to believe that the safety of the public is very important. Ms. Kellman stated she was impressed that Mr. Kiu was pro-active and worked on improving conditions at the restaurant, but her concern is that his employees are not concerned with the public as much as they are concerned with the business. More education may be needed to show the consequences of the law, not just understanding the law. People may have become sick after eating at his establishment because people do not always know the source of their sickness. Dr. Miller stated that he did see some positive things happening, such as the new refrigerator unit being installed as well as Mr. Kiu taking steps to address the critical and non-critical issues as well.

*Motion by Ms. Martin, seconded by Dr. Miller to continue the Hearing to the September 13, 2010 Board of Health Meeting, with the same requirement that Mr. Kiu will attend the next scheduled meeting if any critical violations are reported. Unanimous approval.*

- **Board Reorganization** - required annually in accordance with the provisions of M.G.L.c. 111, §27, the Board must elect a Chair, Vice Chair, and Clerk.

- **Chairman** – Ms. Candace Martin

*Motion by Dr. Miller, seconded by Ms. Kellman, to elect Ms. Candace Martin as Chairman.*

- **Vice-Chairman** – Dr. Donald Miller

*Motion by Ms. Martin, seconded by Ms. Kellman, to elect Dr. Donald Miller as Vice-Chairman.*

- **Clerk** – Ms. Katherine Kellman

*Motion by Ms. Martin, seconded by Dr. Miller, to elect Ms. Katherine Kellman as Clerk.*

*Unanimous approval.*

- **Staff Appointments** - In accordance with the provisions of M.G.L.c. 111, §30, the Board of Health appoints the following persons to serve as its agents and officers for the fiscal period of July 1, 2010 through June 30, 2011, and beyond as necessary to serve at the pleasure of the Board. Said appointment is for regulatory authority only and does not guarantee any salary or fee.

**Permanent Staff**

**Thomas G. Carbone** as Director of Public Health

**Joanne Martel, R.N.** as Assistant Director of Public Health/Public Health Nurse

**Daniel H. Tremblay** as Sanitarian  
**Patricia Crafts** as Health Agent.  
**Jane Morrissey, R.N.** as Public Health Nurse  
**Ronald Beauregard** as Agent (Healthy Communities Tobacco Control Program)  
**Robert Douglas** as Agent (Conservation Director)  
**Linda Cleary** as Agent (Conservation Agent)  
**Vacant** as Agent (Plumbing Inspector)  
**David Dargie** as Agent (DPW Construction Engineer)  
**Anthony Turiano, M.D.** as Board of Health Physician

**Contract Staff (on call as needed)**

**Michelle Grant** as Agent  
**Thomas Murphy** as Agent  
**Charlene Gagnon** as Public Health Nurse  
**Nanci MacKenzie** as Public Health Nurse  
**Janet Clarke** as Public Health Nurse  
**Kay Devanna** as Public Health Nurse

**Emergency Appointments** – In accordance with the provisions of M.G.L.c. 111, §30, the Board of Health hereby authorizes the Director of Public Health or the next person in succession to make emergency appointments of Health Agents with the verbal approval of the Chairman of the Board of Health or a member in succession, and the Town Manager. Said appointments shall expire in 7 days unless otherwise extended by the Board of Health, and shall be for emergency purposes only.

*(Please note that this final section is intended to ease the use of mutual aid services from other communities in the event of an emergency requiring swift response. It transfers the Board's authority to those responding agents and legalizes their actions. Said responding agents will be under the direction of a permanently appointed agent.)*

*Motion by Ms. Martin, seconded by Dr. Miller, to appoint Permanent Staff, Contract Staff and Emergency Appointments as defined in Mr. Carbone's Memo dated July 8, 2010, listed in its entirety above. Unanimous approval.*

**III. Discussion**

- **Mosquito Test Results** – Mr. Carbone spoke with Walter Montgomery from the Massachusetts Mosquito Control and the only area that had positive tests for West Nile Virus (WNV) was a permanent testing site behind the DPW in North Andover, which is between Osgood Street and Rte. 125. Mr. Carbone did not hear of any mosquitoes testing positive in Andover. After the positive testing, the testing sites have been expanded to areas where they know there is increased activity. Usually we don't see positive results until the end of August, and Mosquito Control's theory is that with such dry conditions, the water is not flowing and there is no flushing of the

wetlands, so puddles become more of a breeding area. The next step is to try to attack the adult population that are testing positive right now with spraying in North Andover. Mr. Carbone did not see a need to do any spraying right now in Andover. We can probably delay any amplification until later on in August.

North Andover is looking at a one mile radius to be sprayed and will step up their testing for the rest of the season in the entire area. They are continuing to lavaecide with pellets in the catch basins in North Andover and Andover. Ms. Martin asked if Mr. Carbone had a plan set up and ready to go if we see any changes in Andover, and if we would only do the school areas again. Mr. Carbone replied that he is comfortable with the Town's use of the reverse 911 which was used when Andover had a water shortage, so by using that and the message boards we will be able to get the word out if we do spray. The Board of Health would be the deciding authority on whether to spray or not. Mr. Carbone informed the Board that there are now a couple of additional documents as well as postings concerning mosquito spraying on the Town website. Mr. Carbone plans to put up signs as well as get the information out on cable TV to step up public awareness.

- **Training Component - Video – Conducting a Public Hearing** – The Board decided not to view the video until the next Board of Health Meeting on August 9, 2010.

#### **IV. Old Business**

- **Michael Way Housing Issue** – Present were neighbors, Eileen Sheehan, 31 Michael Way, and Paul Sauerbrunn, 36 Michael Way, who directly abuts the property in question. Ms. Martin stated that at the last meeting the Board requested documentation and affidavits from the neighbors. Mr. Carbone stated that he did receive four or five affidavits and spent some time going over them. Mr. Carbone has an appointment with Town Counsel tomorrow. Mr. Carbone stated that some parts of the affidavits he received did not deal with public health issues, but provides a good background of the situation. Formal affidavits will have to be drawn up that the neighbors could all sign and then we could go to court for a search warrant. An ORDER would have to be issued. Mr. Carbone will go over all these details with Town Counsel. Mr. Sauerbrunn explained to the Board some of the problems he has witnessed including the woman bringing several bags of trash into her unit, blocking the front door, piles of boxes visible, as well as her car being full of junk.

Ms. Sheehan expressed her frustration with the Board because she felt the other citizens have not been heard and that the Town has not dealt with the problem for many years. Ms. Martin explained to the neighbors that she understood their frustration, but they had to understand that the Board does not have the authority to enter a property without the homeowner's permission, and that there is a process that has to be followed. Mr. Carbone stated that the Board cannot trample on people's rights. If the Fire Department goes to the property for a well-being check, they can get in, that is why Ms. Sheehan witnessed the Fire Department trying to gain access. The Board is trying to get the best evidence together that is health related.

Unfortunately, being out gardening at midnight and sleeping in her car is not against the law or a health issue. Another citizen joined the meeting and was aware of many Condominium Associations, and suggested that the Trustees of the Association could change their rules and regulations so that they could address her property. Mr. Carbone proposed to send a general e-mail to the neighbors after the meeting with Town Counsel to let them know what decision is made on how the Town intends to proceed.

## **V. Definitive Subdivision Plans**

- **39-47 High Plain Road, Three Lot Subdivision** - Mr. Carbone explained that this is a three lot subdivision which will be creating one new lot on High Plain Road. They will be combining the two lots, which will be split up into three lots, keeping the two existing structures on the two existing lots and adding one new lot. A cul-de-sac is being laid out but will not be built – it is just being used for frontage and the driveway will be there instead. The right-of-way will most likely remain a private way. There was a question about parcels A & B because parcel B is tiny. Mr. Carbone will ask to clarify what is going on with parcels A & B at the Interdepartmental Review (IDR) which will be taking place tomorrow. All three lots will be on Town water and sewer. Mr. Carbone recommended approval.

*Motion by Dr. Miller, seconded by Ms. Kellman, to approve the three-lot subdivision for 39-47 High Plain Road with the usual conditions as stated below:*

1. *Any modification, amendment, or change to the above-cited Definitive Plan shall be submitted as a new or modified Definitive Plan in accordance with the provisions of MGL Chapter 41, Section 81U.*
2. *Subject to Conservation Commission approval of the above dated plan by Order of Conditions or Negative Determination.*

*Unanimous approval.*

## **VI. Plan Review**

### **A. D.W.R.P. Variances/Local Upgrade Approval**

- **45 Bellevue Road, Leach Area to be 4' above Water Table where 5' is Required** – This LUA is needed to let the homeowner avoid a pump installation. The site is in the Zone II Protection Area for the Tewksbury Hospital well fields. Mr. Carbone recommended approval.

*Motion by Ms. Martin, seconded by Dr. Miller to approve the LUA at 45 Bellevue Road to allow the leach area to be 4' above the water table where 5' is required. Unanimous approval.*

- **49 Juniper Road, Leach Area to be 16' from Foundation where 20' is Required** – The land on this property slopes at a steep grade and is in a wooded area, so they do not want to change the contour of the property. Mr. Carbone recommended approval.

*Motion by Dr. Miller, seconded by Ms. Martin to approve the LUA at 49 Juniper Road to allow the leach area to be 16' from the foundation where 20' is required. Unanimous approval.*

## **VII. Staff Reports**

### **A. Director's Report:**

- **Salt Shed Meeting Update** – Mr. Carbone informed the Board he was disappointed that MDOT didn't come with information on why the River Road site was chosen. More homework and fact gathering needs to be done by MDOT.
- **Update on Intern Projects** – Mr. Carbone informed the Board that he will be having the two interns, Kerri Barton and Kirstin Heinrich, attend the August 9, 2010 Board of Health Meeting to present their work. Ms. Barton has been researching Lyme Disease and lead a great meeting two weeks ago. She has come up with good plans and Mr. Carbone thinks in the next couple of weeks they will coalesce. Ms. Heinrich is preparing trail maps by looking at all the available Andover maps together and identifying several different mapping systems – Avis, Town, and Conservation areas. She will be creating a webpage to bring it all together as several maps. On the website she will make a place to click for tours people can take and the site will tell how far each tour is. Next she will be working on determining outlying areas with safe walking surfaces such as roadways that have sidewalks in Town and at schools where she can put together a one or two mile loop for walking.
- **Mr. Thomas Carbone's Six Month Work Plan** - Ms. Martin expressed her appreciation of Mr. Carbone's Work plan and is pleased that he does a lot of work with community outreach, whether it is working with the Interns, going to the schools to talk about public health, or getting students interested in doing projects. One such project that was very impressive was the Wood Hill Project where the students researched preventative actions for the flu season and provided PowerPoint presentations and videos. Ms. Martin hopes that these programs will inspire some of the students to enter the Public Health field.
- **Update on Fish Brook** – Mr. Carbone informed the Board that there is no update from the Town Manager at this time.
- **Water Ban** - Mr. Carbone informed the Board that the water ban was voluntary. With the heat wave Haggetts Pond was down a foot and we were seeing more shoreline. Therefore a voluntary water ban was issued to decrease outdoor water use and to refill the reservoirs.
- **Update on Camps** - Ms. Martin asked Mr. Carbone if all of the camps were ready to go. Mr. Carbone replied that there was one more camp to finish up. There were a couple of camps that dropped out. Lacrosse Camp was scaled down as



well as the baseball camp, so they didn't have to be labeled a camp. Since the baseball camp had already advertised as a camp, Mr. Carbone had them send a letter to the parents so that they knew that the sessions would not be regulated by the Board of Health and Health Camp Regulations.

- **Bin 28** – Mr. Carbone informed the Board that Bin 28, the new Tapas Bar at 2 Elm Square, was now open.
- **Open Meeting Law** – Ms. Martin, Board of Health Chair, requested that Mr. Carbone review all Executive Session minutes to ensure that they have been released.
- **Important Dates:**
  - August 9<sup>th</sup> @ 6 p.m. – Board of Health Meeting
  - September 13<sup>th</sup> @ 6 p.m. – Board of Health Meeting
  - October 27 to 29<sup>th</sup>, MHOA Conference
- **Nurses' Report for June, 2010** –The Nurses' Report was for informational purposes only.
- **Inspectors' Reports for June, 2010** – The Inspectors' Reports were for informational purposes only.

#### **VIII. Board Member Reports**

- N/A

#### **IX. Adjournment**

*Motion by Dr. Miller, seconded by Ms. Martin, to adjourn at 8:10 p.m. Unanimous approval.*